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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**STB EX PARTE NO. 646 (Sub. No. 3)
WAYBILL DATA RELEASED IN THREE-BENCHMARK
RAIL RATE PROCEEDINGS**

**COMMENTS OF THE
U.S. DEPARTMENT OF AGRICULTURE**

**Edward Avalos
Under Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture
Washington, D.C. 20250**

Date: May 3, 2010

AUTHORITY AND INTEREST

The Secretary of Agriculture is charged with the responsibility under the Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946 to represent the interests of agricultural producers and shippers in improving transportation services and facilities by, among other things, initiating and participating in Surface Transportation Board (Board) proceedings involving rates, charges, tariffs, practices, and services.

INTRODUCTION

The Department of Agriculture (USDA) thanks the Board for holding this proceeding and the opportunity to express its views regarding the Board's proposed rule to allow the use of up to four years of waybill sample data in the development of comparison groups used in three-benchmark rate appeals.

USDA supports the Board's proposal to use up to four years of waybill sample data in comparison groups developed by shippers and railroads. This would give shippers more flexibility in the selection of a comparison group and facilitate the gathering of adequate data for statistical significance.

USDA COMMENTS

The ability of shippers to appeal excessive rail rates is particularly important for agricultural producers because of the characteristics of the market in which they operate. Because there are many grain and oilseed producers that are relatively small in size and because their products are homogeneous with many substitutes, individual producers are

considered “price-takers.” That is, they have little or no ability in the short run to influence the price they receive for their products, and therefore, are unable to pass increases in costs forward to buyers of their products. Instead, these individual producers tend to absorb any cost increases because of their lack of market power. Consequently, increases in transportation costs typically result in decreased producer incomes as individual producers absorb the increased transportation cost. In turn, lower producer incomes can adversely affect the ability of individual producers to borrow funds, potentially reducing economic prosperity in rural areas. Higher transportation costs may also hinder the competitive position of U.S. agricultural products in the highly competitive world marketplace.

Most agricultural shippers would be expected to use the three-benchmark rate appeals procedure due to the relatively small dollar amount at stake in most appeals. The development of a good comparison group is a crucial step in the three-benchmark rate appeals procedure. Although many products shipped by rail may need only one year of waybill sample data to develop a good comparison group, for some products it is important to have enough flexibility to allow the use of up to four years of waybill sample data. This flexibility is especially important for producers of specialty crops where production amounts can vary greatly from year to year.

A key requirement of a comparison group is that it be comprised only of shipments from the railroad defending its rates. Among other criteria, a good comparison group will include shipments of products having comparable shipping characteristics, distances shipped, number of cars in a shipment and comparable car types. After taking all of these factors into account, the comparison group must still have enough shipments

to perform statistical analysis. Therefore, a decision to limit the comparison group to a single year risks the possibility of not having an adequate number of shipments in the comparison group to perform a solid statistical analysis of the rates. This can even be true of Class I Railroads in a given year after filtering the data for desired shipment characteristics.

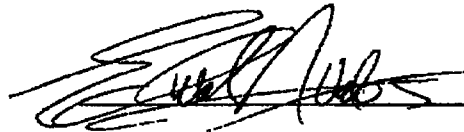
The use of up to four years of waybill data in developing a comparison group does not guarantee a favorable outcome to a shipper appealing rail rates or the railroad defending its rates. It only ensures that a shipper or railroad has the flexibility needed to develop a large enough comparison group for statistical analysis. Since the Board's choice of the final comparison group is decided by the merits of the comparison groups tendered by the shipper and the railroad, the flexibility will undoubtedly help the Board to choose the best comparison group.

In its analysis of waybill samples from 2003 to 2008, USDA found an inadequate number of comparable shipments originating on some Class I railroads in a single year from which to build a good comparison group for anhydrous ammonia (STCC 2819815), and for some products when hauled in the larger jumbo railcars. In addition, USDA is concerned that some railroads may have an inadequate number of shipments for other agricultural inputs or products from which to develop a statistically sound comparison group.

SUMMARY

USDA urges the Board to allow shippers and railroads to use up to four years of waybill sample data in the development of comparison groups.

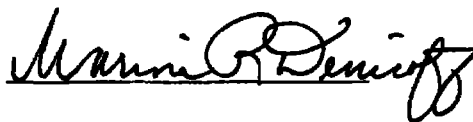
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edward Avalos', with a stylized flourish at the end.

Edward Avalos
Under Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture
Washington, D.C. 20250

CERTIFICATE OF SERVICE

I, Marina R. Denicoff, certify that on this 28th day of April, 2010, I did not cause a copy of the foregoing document to be served by first-class mail, postage prepaid, on all parties of record in STB Ex Parte No. 646 (Sub. No. 3). USDA attempted to obtain a list of parties of record, but was unable to obtain this list because no Notice of Intent to Participate was required.

A handwritten signature in black ink, appearing to read "Marina R. Denicoff", with a stylized flourish at the end.

Marina R. Denicoff
Acting Director
Transportation Services Division
U.S. Department of Agriculture
Washington, D.C. 20250